Annual Report

College Relations Commission

1984-1985

Ontario

College Relations Commission

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To: The Members of the Legislative Assembly
Province of Ontario

ANNUAL REPORT
1984-1985

Dear Members,

We have the honour to present the Tenth Annual Report of the College Relations Commission, covering the period from September 1, 1984 to August 31, 1985.

Sincerely,

Bryan M. Downie
Chairman

ISSN 0824-989X

TABLE OF CONTENTS

Duties of the Commission 1

Members of the Commission 2

Introduction 3

Staff and Facilities 3

Decision of the Supreme Court of Ontario 4

Negotiations and Appointments 6

1. Support Staff 6

2. Academic Staff 6

3. Good Faith Bargaining 8

DUTIES OF THE COMMISSION

The College Relations Commission was established by Section 55 of **The Colleges Collective Bargaining Act.** Revised Statutes of Ontario, 1980. Its duties are:

a) to carry out the duties imposed on it by this Act and such other functions as may, in the opinion of the Commission, be necessary to carry out the intent and purpose of this Act;

b) to maintain an awareness of negotiations between the parties;

c) to compile statistical information on the supply, distribution, professional activities and salaries of employees;

d) to provide such assistance to parties as may facilitate the making or renewing of agreements;

e) to select and, where necessary, to train persons who may act as mediators, fact finders, arbitrators or selectors;

f) to determine, at the request of either party or in the exercise of its discretion, whether or not either of the two parties is or was negotiating in good faith and making every reasonable effort to make or renew an agreement;

g) to determine the manner of conducting and to supervise votes by secret ballot pursuant to this Act; and

h) to advise the Lieutenant-Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or closing of a college or colleges will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the college or colleges.

The Chief Executive Officer and Secretary of the Commission is R.H. Field. The Commission's offices are at 111 Avenue Road, Suite 400, Toronto, Ontario M5R 3J8.

MEMBERS OF THE COMMISSION

Chairman —
BRYAN M. DOWNIE, B.A. (Concordia, Minnesota), M.B.A. (University of Chicago), Ph.D. (University of Chicago).

Dr. Downie, (Professor Industrial Relations and Public Policy, Queen's University) has served as a fact finder, mediator, and interest arbitrator. He has published extensively in the area of labour relations and his book, *Collective Bargaining and Conflict Resolution in Education* examines the activities and policies of the Education Relations Commission during the formative years. He is Canadian Director and a Board member of the Society of Professionals in Dispute Resolution, an association of third party neutrals based in Washington, D.C. and is currently President-elect of the Canadian Industrial Relations Association and a member of the Board of Directors of Social Science Federation of Canada.

Vice-Chairman —
T. GARY O'NEILL, B.A. Sc. (University of Toronto), M.Eng. (Carleton), LL.B. (University of Ottawa).

Mr. O'Neill is a member of an Ottawa law firm who is knowledgeable in both dispute resolution and the issues in the Education sector of Ontario. Since 1977, Mr. O'Neill has served as a third-party on numerous occasions.

Commissioner —
HARVEY M. NIGHTINGALE, B.A. (University of Western Ontario), M.Ed. (University of Toronto), M.A. (York University).

Mr. Nightingale served as Director of Economic and Legislative Services for the Ontario Trustees' Council from 1973 to 1981. In this position he was responsible for both developing and articulating the trustees' position on various educational issues, including collective bargaining — the School Boards and Teachers Collective Negotiations Act.

Mr. Nightingale is Executive Director of the Ontario Nursing Home Association.

Commissioner —
LOUISE D. BINDER, B.A. (University of Toronto), LL.B. (Queen's University).

Ms. Binder is Co-ordinator of Labour Relations with Gulf Canada Products Limited. Following graduation from law school she practised labour law for management with a Toronto law firm. Since 1977, she has been in private sector Employee Relations.

Ms. Binder is also a member of the Ontario Public Service Labour Relations Tribunal.

Commissioner —
DONALD S. FELKER, B.Sc. (University of Ottawa), M.Ed. (University of Toronto), Ed.D. (University of Pennsylvania).

Dr. Felker, a self-employed educational consultant, has served as an appointee to both grievance and arbitration boards. He spent thirteen years in the Ontario Public School System as a Teacher, Vice-Principal and Principal and from 1968 to 1973, he served as General Secretary for the Ontario Secondary School Teachers' Federation. Dr. Felker is a Fellow of the Ontario Teachers' Federation and a Life Member of the Ontario Secondary School Teachers' Federation.

I INTRODUCTION

The mandate of the College Relations Commission — to maintain an awareness of and to facilitate collective negotiations between the Ontario Council of Regents for Colleges of Applied Arts and Technology, as employer, and the Ontario Public Service Employees Union, representing the Academic and Support Staffs — is contained in the **Colleges Collective Bargaining Act.** Passed in 1975, and revised in 1980, this Act gives both the Academic Staff and Support Staff the right to strike and the Ontario Council of Regents for Colleges of Applied Arts and Technology the right to lock-out. These rights, however, are regulated. For example a strike or lock-out is not legal until:

a) A fact finder has met with the parties and his/her report has been made public; and

b) A 30-day cooling off period takes place after the fact finder's report is submitted to the parties; and

c) After the members of the employee organization have voted — by secret ballot in a supervised vote — on the last offer of the Council of Regents; and

d) After the members of the employee organization have voted — by secret ballot in a supervised vote — to take strike action.

At any time during the process, the parties may choose voluntary binding arbitration, or final offer selection as an alternate means of dispute resolution.

The Commission maintains its awareness of the negotiation process from the filing of an intent to negotiate by the parties, to the signing of a collective agreement. Particular attention is paid to the timing and appropriateness of appointments of fact finders, and mediators.

The conduct of votes — last offer, strike, or ratification — has assumed major importance for the Commission. This is due not only to the number of votes which have been supervised, but also to the number of members of the employee organizations, and the number of campuses involved.

II STAFF AND FACILITIES

The Commission shares staff and facilities with the Eduction Relations Commission and has participated with the Education Relations Commission in the training of fact finders, mediators, arbitrators and selectors. Therefore, for a more complete picture of this year's activities, reference should be made to the Tenth Annual Report of the Education Relations Commission.

During the reporting year, one training session was held for fact finders. The Commission continued to recruit additional individuals with high qualifications and from a variety of backgrounds; 3 were academics whose training is in industrial relations, 10 were lawyers specializing in labour law, and 5 were former school trustees or administrators. A feature of this year's workshop was a simulated fact finding hearing. Participants at the workshop were asked to file a fact finder's report based on this simulation.

III DECISION OF THE SUPREME COURT OF ONTARIO

Court decisions flowing from the interpretations of the provisions of the Inflation Restraint Act (Bill 179) were reported in the Ninth Annual Report of the College Relations Commission covering the period from September 1, 1983 to August 31, 1984.

The bargaining climate was dramatically changed when *An Act Respecting the Restraint of Compensation in the Public Sector of Ontario and the Monitoring of Inflationary Conditions in the Economy of the Province* (The Inflation Restraint Act or Bill 179) was given first reading in the legislature on September 21, 1982. Third reading did not occur until December 15 (although by Section 36 this Act is deemed to have been passed on September 21). As a result of this waiting period, and the uncertainty surrounding the final draft of the Act and its implications for the parties there was no bargaining in the colleges' sector for approximately three months.

This legislation, commonly referred to as Bill 179 or the Inflation Restraint Act limited compensation increases in the public sector to "up to 9 percent" in the first year of the program (the "transitional" year) and to 5 percent in the second year (the "control" year). The legislation removed the right to strike or lock-out and also provided for the establishment of the Inflation Restraint Board (IRB) to administer the Act, set its internal policies and procedures and to monitor wage and price controls in the public sector.

The significant sections of the Act are as follows:

Section 13: which extends the terms and conditions of the collective agreement;

Section 14: which allows the parties to a collective agreement to apply to the IRB with respect to certain disputed matters;

Section 15: which states that parties to a collective agreement which includes a compensation plan that is extended under Section II may, by agreement, amend the terms and conditions... other than compensation rates)..

In the spring, the Ontario Public Service Employees Union applied for a judicial review of a decision of the Ontario Labour Relations Board with respect to the interpretation of section 13 of Bill 179 in the case of Broadway Manor Nursing Home. This application was joined by a request from the Durham Board of Education for the judicial review of a decision of the Education Relations Commission involving the same point of law i.e. by extending the terms and conditions of the collective agreement is the collective agreement itself extended?

The Divisional Court of the Supreme Court of Ontario ruled that section 13 (b) which extended "the terms and conditions of every collective agreement that includes a compensation plan" violated section 2 of the Charter of Rights (freedom of association) since it prevented the displacement of the Christian Labour Association of Canada by the Service Employees' International Union Local 204. The ruling in favour of the Ontario Public Service Employees' Union and the Education Relations Commission was appealed in the Court of Appeal.

The Commission had decided (in a good faith bargaining case involving the Durham Board of Education) that the provisions of the *Inflation Restraint Act* did not automatically extend the collective agreement and, therefore, that collective bargaining on compensation matters should be continued under the provisions of Bill 100. This determination was taken for judical review by the Durham Board of Education.

The Commission's determination was upheld in the Divisional Court of the Supreme Court of Ontario in October 1983. In May 1984 the case was argued in the Court of Appeal. In its decision released on October 22, 1984 the Court of Appeal made the following comments:

> In short, the Labour Relations Board held that section 13(b) of the Act extended the Life of collective agreements which contained compensation plans. The Education Relations Commission held that Section 13(b) did not extend the life of such collective agreements ... The Board and Commission gave extensive, well considered and persuasive reasons for their conclusions. Both, however, cannot be right.

The Court went on to say:

> ... We conclude that the Labour Relations Board and the Divisional Court erred in finding that the Service Employees Union's application was not timely on the grounds that Section 13 continued in force the collective agreement there in issue.

We further conclude that the Education Relations Commission's decision, that the application of the OSSTF was timely, was correct ... and that the majority decision of the Divisional Court in that regard in the Durham Board of Education was in error.

IV NEGOTIATIONS AND APPOINTMENTS

Public Sector Prices and Compensation Review Act (Bill 111)

In the current year the dynamics of bargaining between the Ontario Council of Regents for Colleges of Applied Arts and Technology, as employer and the Ontario Public Service Employees Union representing the Academic and Support Staffs were further changed with the introduction of Bill 111. (An Act to Provide for the review of Prices and Compensation in the Public Sector and for an Orderly Transition of the Resumption of Full Collective Bargaining).

The Act provided for the return to normal forms of dispute resolution but at the same time changed the parameters of collective bargaining. The Treasurer, in introducing the legislation, indicated the province would limit funding for all public sector compensation increases to provide an average increase of 5 percent. Criteria for increases referred to in the Act were published in *The Ontario Gazette* with a recommended range for salary increases of zero to five percent. This, plus the Treasurer's statement concerning the 5 percent increase in transfer payments provided narrow boundaries to the parties in the public sector negotiations for the 1984-85 bargaining year.

1. SUPPORT STAFF

Negotiations between the Ontario Public Service Employees Union representing the Support Staff and the Council of Regents began in January with the union delivering a "notice" of intent to negotiate to the council, and filing a copy with the Commission. Between February and June, the parties met on a number of occasions. Following a *joint* request by the parties, the Commission appointed a fact finder to assist the parties. His report went to the parties on August 15.

The Commission, on July 30, 1985, appointed a mediator to assist the parties. Working with the mediator the parties reached a tentative agreement in late August, which the membership ratified at a Commission supervised vote, September 20, 1985.

2. ACADEMIC STAFF

Negotiations for the 1984-85 Collective Agreement between the Council of Regents and the Ontario Public Service Employees Union representing the Academic Staff began in January, 1984 when the Union delivered an "intent to negotiate" to the Council of Regents and filed a copy with the Commission. In July following 7 negotiating sessions, the parties jointly requested the appointment of a fact finder. His report was delivered to the parties on August 20th, and on the same day the Commission appointed a mediator, who met with the parties prior to the release of this report to the public. In the report, which was released to the public on September 5th, the fact finder noted:

> Given (a) the depth of feeling and strength of convictions expressed to me by the parties, and (b) the difficulties involved in making changes such as those suggested above, I have grave doubts that the parties will be able to reach agreement on the complex issues which divide them without the exercise of some form of economic sanctions either in this round, or subsequent rounds, of bargaining.

In a vote held on September 18 which was requested by the Union and supervised by the Commission the membership voted 5769-279 to reject the last offer received from the Council of Regents. Mediation continued from September 25-29.

On October 24, at the request of the Union, the Commission supervised a strike vote, in which the membership indicated its intention to strike (4973-1511). A third round of mediation began on October 14 and ended on October 16. The next day the Academic Staff began its first strike against the Council of Regents.

On November 7, 1985 the Commission decided that the strike had placed in jeopardy the successful completion of courses of study by the students. This determination was made primarily on the basis of the status of negotiations. Throughout the negotiations neither party showed much willingness to compromise so that up to the date of the determination no real progress had been made.

On Thursday November 8, the Minister of Colleges and Universities rose in the Legislature to state:

> Mr. Speaker, cabinet has been advised by the College Relations Commission that the education of students enrolled in Ontario's 22 colleges of applied arts and technology will be in jeopardy if the strike by the teaching staff in those institutions continues.
>
> Today, as a result, I will introduce an Act respecting the Labour Dispute between the Ontario Public Service Employees Union and the Ontario Council of Regents for the Colleges of Applied Arts and Technology.

This legislation (Bill 130) terminated the strike and ordered the Academic staff back to work immediately. The significant sections of this Act are:

Section 3 which provides for a retroactive interim pay increase

Section 4 which provides for the appointment of an arbitrator

Section 5 which directs the arbitrator to examine all matters in dispute, except instructional assignments, and sets the term of agreement at one year

Section 10 which provides an Instructional Assignment Review Committee composed of three persons appointed by the Minister; report and recommendations to be submitted by June 30, 1985

The Arbitrator, Paul C. Weiler, submitted his report to the parties on June 10th.

The Instructional Assignment Review Committee, composed of Michael Skolnik, (Chairman) William Marcotte and Brian Sharples submitted a report which made 16 specific recommendations in three broad areas: Financial, Organization and Management and Collective Bargaining. In summarizing the recommendations the report states:

> The problems in instructional assignment that are identified in this report are both long-standing and persuasive. Instructional assignment in the CAATs is not in a healthy condition. Faculty morale related to instructional assignment is alarmingly low; communication between faculty and administration is poor; the intellectual and physical infrastructure required to sustain effective instruction is run-down; and present conditions and relationships do not facilitate problem-solving.

The committee has presented a number of which we believe are necessary to address the problems which we have identified. Necessarily some of these recommendations are of a longer term developmental nature while others can be acted upon immediately. We encourage those who have the authority to concentrate in the first instance upon those recommendations which can be effected, with both parties' agreement, through negotiation of the collective agreement; i.e., those recommendations pertaining to the provisions in the collective agreement. At the same time, we hope that those who are in a position to consider the financial, managerial, and other recommendations of a broader nature will give early consideration to embracing these recommendations in principle and take at least initial steps toward their implementation.

3. GOOD FAITH BARGAINING

Both the Ontario Public Service Employees Union, representing the Academic Staff and the Council of Regents made application to the Commission for determinations according to Section 56(f) — whether or not either of the parties was negotiating in good faith. These charges were investigated by the Chief Executive Officer, as outlined in Policy No. 9 of the Commission's Policy and Procedures Manual. The College Relations Commission set dates for the hearing of these applications, however, following a joint request by the parties dated December 6, 1984 the Commission agreed to a postponement sine die. (These applications were reported in the 1983/84 Annual Report).